



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Agriculture

- ☒ Preproposal Statement of Inquiry was filed as WSR 05-04-077; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) The Washington State Department of Agriculture's Fruit and Vegetable Inspection Program is proposing to amend chapter 16-390 WAC (WSDA Fruit and Vegetable Inspection Districts, Inspection Fees and Other Charges).

Hearing location(s): Wenatchee

WSU Tree Fruit Research & Extension Center (street parking only)
1100 N. Western Avenue
Wenatchee, WA
Date: April 26, 2005 Time: 1:00 p.m.

Hearing location(s): Yakima

WSDA Yakima Office
Second Floor Conference Room
21 North First Avenue
Yakima, WA

Date: April 27, 2005 Time: 11:00 a.m.

Submit written comments to:

Name: George Huffman
Address: P.O. Box 42560
Olympia, WA 98504-2560
e-mail: ghuffman@agr.wa.gov
fax: (360) 902-2092 by (date) close of business on 4/27/05

Assistance for persons with disabilities: Contact Virginia Walsh by April 19, 2005

TTY (360) 902-1996 or (360) 902-1996

Date of intended adoption: May 26, 2005

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposed amendments to chapter 16-390 WAC (WSDA Fruit and Vegetable Inspection Districts, Inspection Fees and Other Charges) will increase the following fees in excess of the Office of Financial Management fiscal growth rate factor:

- All cwt. fees
- The minimum charge for a certificate of compliance (WAC 16-390-150(4)(a))
- The field or orchard per acre inspection fee (WAC 16-390-220(1))

The department is also proposing a volume discount for apples and pears that are inspected and certified on-line for domestic shipment, controlled atmosphere certification, etc.

Note: The department's current hourly rates (regular and overtime), phytosanitary certification, minimum certification and Customer Assisted Inspection Program (CAIP) fees will not change. The Fruit and Vegetable Inspection Program is supported entirely by fees generated by the services it provides. RCW 15.17.150 gives the WSDA director the authority to adopt rules establishing fees necessary "to recover the costs of providing inspection and/or certification or other requested services." The proposed fee increases are necessary to offset the increases in the Fruit and Vegetable Inspection Program operating expenses caused by inflation.

Statutory authority for adoption: Chapter 15.17 Standards of Grades and Packs, Chapter 34.05 Administrative Procedure Act and Chapter 25, Laws of 2003, 2003 1st Special Session 309, Subsection (2).

Statute being implemented: Chapter 15.17 Standards of Grades and Packs

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE

March 23, 2005

NAME (type or print)

Robert W. Gore

SIGNATURE**TITLE**

Assistant Director

CODE REVISER USE ONLY

CITATION: WAC 16-390-150(4)(a)
STATE OF WASHINGTON
FIVE

4/23/05
11/14
05-07-155

DATE

WSR

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Washington State Department of Agriculture

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Jim Quigley	Olympia	(360) 902-1833
Implementation..... Jim Quigley	Olympia	(360) 902-1833
Enforcement..... Jim Quigley	Olympia	(360) 902-1833

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

X No. Explain why no statement was prepared.

RCW 19.85.030 (1)(a) requires an agency to prepare a Small Business Economic Impact Statement (SBEIS) for proposed rules that impose a more than minor cost on the businesses in an industry. The department mailed an economic impact survey to each of the three hundred and ninety fruit and vegetable growers, shippers and packers on the Fruit and Vegetable Inspection Program customer list. Sixty-seven entities responded to the survey (17.2%). The total additional cost of compliance imposed by the proposed rule amendments as reported by the respondents was \$423,813.00.

RCW 19.85.040(1) requires that an agency determine whether the proposed rule will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply. The statute suggests that an agency's cost analysis be based upon one or more of the following methods:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

Due to the nature of the industry, the department has used the "one hundred dollars of sales" method and has found that the average cost imposed on small businesses per hundred dollars of sales is \$00.091 (.091%). The average cost imposed on the ten percent of the largest businesses in the industry that are required to comply is \$00.037 (.037%). Based upon the survey results, the department has concluded that the proposed increase in Fruit and Vegetable Program fees **does not** impose a "more than minor" cost on the regulated community and a formal Small Business Economic Impact Statement (SBEIS) is not required.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☐ No: Please explain: The WSDA is not a listed agency under RCW 34.05.328(5)(a)(i).

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-020 What are the fees for grade and condition certificates for fruit? WSDA fees for grade and condition certificates for all fruits are:

(1) A minimum charge of sixteen dollars.

(2) The fees for federal-state or state grade and condition certificates of all fresh market apples, pears, and soft fruits in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

Type of Fruit	Fees per CWT or Fraction Thereof
Apples <u>on-line for domestic shipping, CA, etc.</u>	\$((0.155)) 0.17
Apples for export	\$0.17
Apricots, cherries, nectarines ((and)), peaches, plums, prunes, other soft fruits, grapes and berries	\$((0.21)) 0.23
Pears	\$((0.12)) 0.17
((Plums, prunes, other soft fruits, grapes and berries)) Pears for export	\$((0.16)) 0.17

~~((3) The fees for state grade and condition certification of all fresh market apples, and pears that are in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:~~

Type of Fruit	Fees per CWT or Fraction Thereof
Apples	\$0.145
Pears	\$0.11))

(3) The department will give a volume discount for apples and pears that are inspected and certified on-line for domestic shipment, controlled atmosphere certification, etc. Packing of up to 4800 cwt per eight-hour shift, the normal inspection fee will be assessed, and every cwt of product above 4800 cwt for that same shift will be charged at \$0.12 cwt. Platform inspection fees will still apply (WAC 16-390-200).

(4) The department charges a fee of ~~((two))~~ three dollars ~~((and fifty cents))~~ per ton net weight (or fraction thereof); for all apples, pears, stone fruits, berries, and grapes in bulk or in containers that are inspected for processing.

(5) The department charges a fee of thirty-two dollars per hour, with a minimum certificate charge of sixteen dollars, when an inspection is requested only to verify the product, conveyance, markings, or other factors not related to quality.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-030 What are the fees for grade and condition certificates for vegetables? WSDA fees for grade and condition certificates for all vegetables are:

(1) A minimum charge of sixteen dollars.

(2) The fees for **federal-state or state grade and condition certificates** for all fresh market vegetables in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

Type of Vegetables	Fees per CWT or Fraction Thereof
Asparagus	\$((0.24)) <u>0.23</u>
Cantaloupes and corn	\$((0.125)) <u>0.14</u>
Onions	\$((0.08)) <u>0.09</u>
Potatoes	\$((0.06)) <u>0.07</u>
In-state processing potatoes	\$((0.06)) <u>0.08</u>
Complete inspection	Rate shall be reduced for the level of service required
Tomatoes	\$((0.19)) <u>0.21</u>

~~((3) The fee for state grade and condition certification of all fresh market asparagus in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags is listed in the following table:~~

Type of Vegetable	Fee per CWT or Fraction Thereof
Asparagus	\$0.19

~~(4))~~ (3) For the inspection of vegetables not listed, the department charges a fee of thirty-two dollars per hour.

~~((5))~~ (4) The department charges a fee of ~~((two))~~ three dollars ~~((fifty cents))~~ per ton net weight (or fraction thereof) for the inspection of vegetables to be processed, whether in bulk or in containers.

~~((6))~~ (5) When an inspection is requested only to verify the

product, conveyance, markings, or other factors not related to quality, the department charges the rate of thirty-two dollars per hour, with a minimum certificate charge of sixteen dollars.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-150 What requirements apply to shipping permits and certificates of compliance for fruits and vegetables? (1) Each shipment of apples, apricots, Italian prunes, peaches, pears, dark sweet cherries, Rainier cherries and asparagus must be covered by a shipping permit. All other sweet cherries, whether certified or not, must have a shipping permit indicating freedom from cherry fruit fly larvae.

(2) Shipments of apricots, cherries, peaches, prunes, and asparagus to processors do not require a shipping permit.

(3) A permit or certificate of compliance may be issued without additional charge if the lot is certified.

(4) If the lot has not been certified, a permit or certificate of compliance may be issued based upon the following charges:

(a) The minimum charge for a permit or certificate of compliance is ((two)) three dollars ((fifty cents)).

(b) Two-thirds of the rate for federal-state or state grade and condition certificates applies.

(c) A permit to ship apples and/or pears to a by-product plant outside the state is three dollars.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-220 What is the fee for a field or orchard inspection? The fee for field or orchard inspections made at the applicant's request to determine the presence or absence of disease or insect infestation, or for some other reason is:

(1) ((Two)) Three dollars ((and fifty cents)) per acre or fraction thereof; or

(2) At the platform inspection rate specified in WAC 16-390-200(1).